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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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IN THE MATTER OF THE APPLICATION OF THE
ARIZONA ELECTRIC DIVISION OF CITIZENS
COMMUNICATIONS COMPANY TO CHANGE THE
CURRENT PURCHASED POWER AND FUEL
ADJUSTMENT CLAUSE RATE, TO ESTABLISH A
NEW PURCHASED POWER AND FUEL
ADJUSTMENT CLAUSE BANK, AND TO REQUEST
APPROVED GUIDELINES FOR THE RECOVERY
OF COSTS INCURRED IN CONNECTION WITH
ENERGY RISK MANAGEMENT INITIATIVES.

IN THE MATTER OF THE APPLICATION OF
CITIZENS COMMUNICATIONS COMPANY,
ARIZONA GAS DIVISION, FOR A HEARING TO
DETERMINE THE FAIR VALUE OF ITS
PROPERTIES FOR RATEMAKING PURPOSES, TO
FIX A JUST AND REASONABLE RATE OF
RETURN THEREON, AND TO APPROVE RATE
SCHEDULES DESIGNED TO PROVIDE SUCH
RATE OF RETURN.

IN THE MATTER OF THE JOINT APPLICATION OF
CITIZENS COMMUNICATIONS COMPANY AND
UNISOURCE ENERGY CORPORATION FOR THE
APPROVAL OF THE SALE OF CERTAIN ELECTRIC
UTILITY AND GAS UTILITY ASSETS IN ARIZONA,
THE TRANSFER OF CERTAIN CERTIFICATES OF
CONVENIENCE AND NECESSITY FROM CITIZENS
COMMUNICATIONS COMPANY TO UNISOURCE
ENERGY CORPORATION, THE APPROVAL OF
THE FINANCING FOR THE TRANSACTIONS AND
OTHER RELATED MATTERS.

Docket No.: E-01032C-00-0751

Arizona Corporation Commission

DOCKETED

MAY 15 2003

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CMC

Docket No.: G-01032C-02-0598

Docket No.: E-01933A-02-0914

Docket No.: E-01032C-02-0914

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INTERVENOR MOHAVE COUNTY'S
CLOSING BRIEF

1 The hearing on this Consolidated Docket took place on May 1, 2 and 5. The subject of
2 the hearing was the Settlement Agreement which consolidated issues in five separate dockets
3 involving the Electric rate, Gas rate, and Joint Application seeking approval of CC&N transfer
4 and financing for the sale by Citizens to UniSource.
5

6 We make three observations in this Brief, directed to the Electric rate docket, in order to
7 underscore what appears crystal clear and non-disputed by record or testimony—That until
8 UniSource and Tucson Electric Power stepped into picture in November of 2002, 70,000 plus
9 ratepayers in Santa Cruz and Mohave Counties faced this rate picture from their regulated utility
10 provider: Citizens had not offered this Commission or its 70,000 ratepayers any solution to the
11 \$82 plus million in power purchase costs, i.e., the PPFAC pass through to ratepayers under its
12 1995 Agreement with APS, other than (1) a “new” contract with APS, which has so far
13 accumulated an additional \$50 plus million in additional PPFAC pass-through power purchase
14 costs to the ratepayer, and (2) a request to the Commission to allow it collect from the ratepayers
15 the full \$82 million and the full (now \$50 million) in increased PPFAC charges under the new
16 agreement, and continue passing the new agreement’s PPFAC increases (resulting in an
17 approximate 22% residential rate increase) through to the ratepayer. UniSource has eliminated
18 that picture, leaving only what it must legally honor under its acquisition of Citizens: Citizens’
19 new FERC-approved, market-based, fixed-rate contract’s impact on the PPFAC component to
20 the approved rate, i.e., a 22% increase to residential ratepayers, which, contract, it has told the
21 Commission it will attempt to renegotiate, sharing any savings with the ratepayer.
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25 **FIRST:** In the Electric rate docket, Docket No. E-01032C-00-0751, at no time did
26 Citizens in its Original Application for PPFAC adjustment filed September 28, 2000, or its
27 Amended Application filed September 19, 2001, ever offer to this Commission as a possible
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1 solution to what is now a \$130 plus million PPFAC adjustment request, that it would forego
2 collecting from Citizens' ratepayers in Mohave and Santa Cruz County those excess power costs
3 which it incurred under power purchase contracts *which Citizens knowingly entered into with*
4 *APS instead of investing in sufficient generation assets of its own to cover its ratepayers' needs.*
5 As the Staff Report, at page 41 succinctly demonstrates: the \$130 plus million adjustment
6 request would result in a PPFAC pass through rate increase to residential customers in the range
7 of 27%, in the best of circumstances, to 39%, in the worst of circumstances.
8

9 **SECOND:** Under neither its Original or Amended Application in Docket No. E-
10 01032C-00-0751 did Citizens ever offer to this Commission as a meaningful solution to a repeat
11 of the \$ 130 plus million PPFAC adjustment request, that it, *Citizens, its management and*
12 *stockholders, bearing their own corporate risk and not relying on "maybe" ventures with APS or*
13 *merchant generators* , would commit to *Citizens* (which holds the exclusive right, with its
14 accompanying *duty*, to serve the 70,000 ratepayers in Mohave and Santa Cruz Counties)
15 investing in sufficient native load generation to avoid risk to its ratepayers. The risk avoided is
16 that of the very well understood situation where *any* wholesale supplier, (APS in this case), will
17 clearly, reasonably, and rationally serve its native load ratepayers first in a short supply-high
18 demand market, and seek market purchased power to supply its contracted utilities. (Argument
19 and dispute over specific contract terms aside in this Docket, it is *irrational* to believe that any
20 generation-owning power supplier would ever *knowingly* enter into any type of agreement with a
21 retail utility where it would agree to saddle its native load ratepayers---who, after all had paid for
22 their own native load generation assets in the first place---with any portion of high-priced
23 market purchased power, to "protect" its non-generation owning, contracted utility's ratepayers
24 in a short-supply, high-demand situation. That type of agreement, generation-owning utility's
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1 ratepayers and its shareholders would quite rightfully argue, would result in an unjust and
2 unreasonable rate to them, and the wholesaler would quite persuasively argue that such was
3 never intended, and the disputed contract terms should be interpreted in that light...(Citizens'
4 own touted \$43 million dollars savings, as described below, under the 1995 APS contract does
5 not bode well for an interpretation of that contract that there was no downside risk to such an
6 agreement, i.e., the \$82 million increase in power costs.)

8 The circumstance of having to pay APS \$130 plus million in excess PPFAC power costs,
9 is solely the responsibility and burden of Citizens, its management, and its owners. When
10 market conditions were good, this served Citizens well. In its Original Application it tells us
11 how well: On page 2, Citizens tells us---

13 "As stated, the AED is a generation-dependent utility. For nearly thirty
14 years, with a few minor exceptions, its sole power source has been a full
15 requirements contract with APS. Power supply expenses have been recovered by
16 the AED through the power cost component of basic service rates and the
17 operation of the Purchased Power and Fuel Adjustment Clause....Under the
traditional regulatory paradigm in Arizona, this arrangement has served the AED
and its customers well."---

18 and on page 26, Citizens tells us---

19 "...since the signing of the current system-incremental-cost contract in 1995
20 through the beginning of this summer, Citizens saved approximately \$43 million
21 in power supply costs, as compared with pricing under an average system cost
contract with APS."

22 Or to put this in a different, but relevant, context, Citizens is saying that it avoided the hard
23 corporate and shareholder decisions *and risk* inherent in investing in sufficient generation assets
24 to protect its customers during the transition from a cost-based market to a market-based market,
25 and relied on APS which had made those hard "shareholder" decisions to reliably supply power
26 to its ratepayers, and saved \$43 million dollars under the 1995 contract. (The contract prior to
27 this apparently would not have saved Citizens \$43 million.) Surely, these savings to Citizens
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1 under the 1995 contract had to have a contractual counterbalance for APS under the 1995
2 contract, or changing from the prior contract to the 1995 contract would verge on irrational
3 behavior or gross imprudence by APS, e.g., under the new contract you, Citizens, save \$43
4 million and we, APS, lose recovery from you of \$43 million when times are good; but, when
5 times are bad, you, Citizens, save \$82 million and we, APS, lose \$82 million recovery from you.
6 Yet, that is the essence of Citizens suggested interpretation of the 1995 contract with APS in
7 comparison with its predecessor.
8

9 A contractual counterbalance to Citizens' savings of \$43 million, of course, does exist: it
10 is the \$82 plus million in PPFAC under the 1995 contract which Citizens had to pay when the
11 market was not good. The 1995 contract would be understood as high-risk contract for
12 Citizens—but for the PPFAC pass through component to the basic rate.
13

14 In short, the owners and shareholders of Citizens decided to avoid the risk to the
15 company and shareholders of investing in generation assets, by passing power-generation risks
16 through to ratepayers in the form of power purchase agreements which had a PPFAC adjustor,
17 i.e., a direct pass through to ratepayers. When times were good, this was \$43 million good—and
18 the ratepayers shared in this in accordance with the PPFAC's \$2.6 million cap on PPFAC
19 reduction. When times were bad, this was \$82 million bad—and the ratepayers would have
20 shared in this in accordance with the PPFAC's \$2.6 million cap on increases--except that
21 Citizens sought to eliminate any impact on its company and stockholders by requesting this
22 Commission to pass through to the ratepayer all of its excess power costs, e.g., which amount to
23 approximately \$82 million by June of 2001.
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25 The wisdom and prudence of Citizen's power purchasing strategy is arguably now, and
26 may well forever be, inconclusively debatable against the backdrop of the Western Bulk Power
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1 market dislocated by wildly oscillating market forces brought on by a unique combination of
2 extreme weather and hydroelectric conditions coupled with the flawed attempt at deregulation in
3 California which various market traders took advantage of. See generally, FERC Docket PA02-
4 000, Final Determination, of March 26, 2003.

5
6 **THIRD:**

7 It was not until the filing of the Joint Application by UniSource, TEP and Citizens in
8 November of 2002, and its companion Settlement Agreement filed April 1, 2003, that the
9 Commission sees any attempt by Citizens to modify its ongoing refusal to present this
10 Commission with a solution to a problem of its own making, other than that the ratepayer had to
11 pay for Citizens' engaging in high risk power contracts instead of building or acquiring its own
12 generation resources to reliably supply its ratepayers. And it appears clear that Citizens would
13 *still* not be offering this Commission any solution other than make the ratepayers pay \$130 plus
14 million for its corporate decision to enter into a high risk contract instead of investing in
15 generation resources, *except* for the fact that UniSource has entered the picture to acquire its
16 Electric Division assets, and has proposed a solution which was actually Citizens' responsibility
17 to propose to this Commission—forego passing \$82 million excess power costs from Citizens'
18 old power purchasing practices.

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21 UniSource has gone even further, however, and has told the Commission that it wishes to
22 forego \$50 plus million from Citizens' new power purchasing practices. The aftermath of
23 Citizens' corporate purchasing practices is that UniSource is stuck with Citizens' current
24 purchasing power contract as a liability, in the real sense of the term—Citizens' new contract
25 with APS is binding on UniSource and will result in an unavoidable 22% increase to the
26 ratepayer unless UniSource can successfully renegotiate that problem with the supplier.
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1 **CONCLUSION:**

2 UniSource and TEP have not wavered in the Agreement in any respect with regard to any
3 of the core relief for electric ratepayers which they told the Commission in the Joint Application
4 would be an elimination of *all* of the excess power purchase pass through (approximately \$138
5 million by July 28, 2003) to ratepayers under the PPFAC component of the approved utility rate;
6 leaving only the market-rate-based, fixed-rate contract which Citizens entered into with APS as
7 impacting ratepayers, i.e., requiring a PPFAC base rate adjustment to \$0.07019 per kWh . Page
8 3, Joint Application.
9

10 Since UniSource is legally responsible for Citizens' liabilities (purchase contracts) when
11 it acquires Citizens, UniSource is required to honor the contract which Citizens entered into with
12 APS. By any reasonable standard, UniSource's solution to the \$138 million excess purchase
13 power costs problem which Citizens caused under Citizens' corporate policies, is beneficial to
14 the ratepayers---even though it still leaves them with the lingering legacy of Citizens' "strategy"
15 of not risking its shareholder's money in investing in generation, but, rather insulating its
16 shareholders from any risk at all, by engaging in power-purchase contracts with power suppliers,
17 under a PPFAC pass through component to its basic rate, i.e., the "new agreement" with its built
18 in 22% increase in residential rates.
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21 Whether "honoring" the new contract is palatable to UniSource, or whether UniSource
22 would have entered into a different contract, or any contract at all, or would have embarked on
23 constructing generation facilities to supply the ratepayers in Santa Cruz and Mohave Counties,
24 are not particularly relevant concerns for this proceedings. There is no serious dispute that the
25 new agreement is a FERC-approved, fixed-rate, long-term, market-based-rate agreement, and
26 APS has every right to expect Citizens or its successor in interest, UniSource in this case, to
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1 honor the contract in accordance with its terms. The best choice of electricity provider is simple
2 from this standpoint: UniSource. The fact that UniSource comes bundled with a legacy contract
3 from Citizens is a simple fact of legal jurisprudence: it acquires Citizens' assets and liabilities
4 when it purchases the company.
5

6 The larger question of whether 70,000 ratepayers in two Counties in Arizona should be
7 left with a legacy of being at the mercy of electricity generators and wholesalers under "market-
8 based-rate" contracts because of Citizens' corporate policy of not constructing or acquiring
9 generation resources to serve its ratepayers during the 30 years of its tenure as the holder of a
10 state-approved franchise, cannot be answered under these proceedings.
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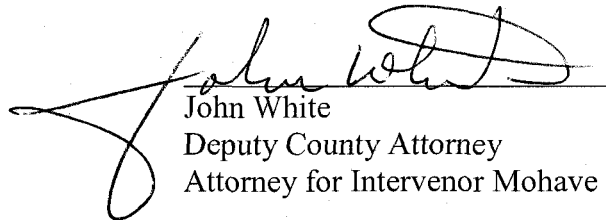
12 To view that circumstance from a different perspective is to see that there is an
13 unintended consequence of the PPFAC mechanism in the form which Citizens presented it to this
14 Commission in its Original Application for relief: under Citizens' 1995 contract with APS
15 together with its June 2001 replacement, the PPFAC mechanism insulates Citizens' stockholders
16 and management in their decision to avoid the risk of investing in generation resources, by
17 allowing a direct pass through of whatever power costs Citizens paid to the ratepayer. Citizens'
18 original application makes much of the fact that the PPFAC is a Commission-approved
19 mechanism. Pages 4 through 9, Original Application. From that, however, it does not follow,
20 that *any* power costs may be passed through. Indeed, the fact of the matter is that the
21 Commission capped the PPFAC at \$2.6 million dollars---not at \$82 million, or whatever Citizens
22 ended up paying---which alone indicates that the PPFAC was never intended to be a stockholder
23 insulation mechanism.
24

25
26 UniSource has eliminated to the extent it could under the circumstances this unintended
27 consequence by simply eliminating the \$138 million in past charges. It cannot eliminate the
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1 PPFAC component of the rate, or the "FERC-approved" agreement which now constitutes that
2 component, without conducting a full rate hearing. The hearing before this Commission simply
3 deals with a PPFAC adjustment, which is a legacy of Citizens' corporate strategy in avoiding the
4 risk and costs of investing in generation resources, by simply buying power and passing those
5 costs on to the ratepayers. This was not UniSource's strategy, it is simply a strategy which it
6 inherits when it buys Citizens.
7

8 **REQUEST:**

9 It is respectfully requested that the Commission approve the transfer of the Certificate of
10 Convenience and Necessity from Citizens to UniSource under such terms and conditions as the
11 Commission determines result in a just and reasonable rates in the electric and gas rate dockets.
12

13
14 
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